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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 AMY GITSON *et al.*,
18
19 Plaintiffs,
20
21 v.
22 TRADER JOE'S COMPANY,
23
24 Defendant.

Case No. 13-CV-1333 VC

**JOINT STATUS UPDATE
REGARDING SCHEDULING OF
MANDATORY SETTLEMENT
CONFERENCE AND
[PROPOSED] ORDER**

Judge: Hon. Joseph C. Spero

TAC Filed: April 3, 2014

Trial Date: Not Set

1 In accordance with this Court's April 6, 2015 order, which is attached as Exhibit 1 to this
2 Joint Status Update, Plaintiffs Amy Gitson and Deborah Ross and Defendant Trader Joe's
3 Company (collectively, the "Parties"), respectfully submit this Joint Status Update regarding the
4 scheduling of the mandatory settlement conference in this matter. As explained below, given
5 Judge Chhabria's extension of the stay in this action until September 29, 2015, the Parties
6 propose to submit a further joint status report to Judge Spero within ten days of the next case
7 management conference (currently scheduled for September 29, 2015).

8 As background, this matter originally was scheduled for a settlement conference on May
9 5, 2014. However, on April 28, 2014, the Parties submitted a joint stipulation requesting that this
10 Court vacate the settlement conference. At the time, Trader Joe's had two motions pending—a
11 motion to dismiss Plaintiffs' Third Amended Complaint (Dkt. No. 82) and a motion to certify for
12 interlocutory appeal. (Dkt. No. 74.) A central issue raised by both motions was whether
13 Plaintiffs have standing to assert claims as to approximately 177 products they did not purchase.
14 The Parties requested a continuance of the settlement conference because they did not believe
15 they were in the position to engage in settlement discussions until this issue was resolved. On
16 April 28, 2014, this Court vacated the May 5, 2014 settlement conference and continued it until a
17 date approximately 60 days after the entry of an order on Trader Joe's motion to dismiss, or 60
18 days after entry of an order on Trader Joe's motion to certify for interlocutory appeal.

19 On August 8, 2014, Judge Chhabria entered a single order on both motions. (Dkt. No.
20 101.) Judge Chhabria denied the motion for interlocutory appeal. (*Id.* at 2-3.) As to Trader Joe's
21 motion to dismiss, he stayed the entire case on primary jurisdiction grounds (*id.* at 3-4), and
22 denied the remainder of Trader Joe's motion to dismiss without prejudice to re-filing once the
23 stay is lifted (*id.* at 4). Judge Chhabria also set a case management conference for November 4,
24 2014,¹ at which he would revisit the propriety of maintaining the stay. (*Id.*) The November 2014
25 case management conference was subsequently rescheduled to March 24, 2015. (Dkt. No. 106.)
26 Accordingly, on November 17, 2014, this Court granted the Parties' request to further continue

27 _____
28 ¹ Judge Chhabria subsequently continued the case management conference scheduled for
November 4, 2014, to November 13, 2014.

1 the mandatory settlement conference previously scheduled in this action, and ordered the Parties
 2 to file a joint status report on the status of the stay ten days after the March 24, 2015 case
 3 management conference (April 3, 2015). (Dkt. No. 108.)

4 On March 20, 2015, Judge Chhabria granted the Parties' request to continue the current
 5 stay of this lawsuit and scheduled a case management conference for June 23, 2015. (Dkt. No.
 6 113.) At the June 23, 2015 case management conference, Judge Chhabria further continued the
 7 stay until September 29, 2015 and set a case management conference for the same date. (Dkt.
 8 No. 117.)

9 In short, the Parties are in no different position than when they last submitted an update.
 10 Therefore, the Parties propose that within ten days of the next case management conference in
 11 this matter, which is presently scheduled for September 29, 2015, they will jointly submit a status
 12 update wherein they will report on (1) the status of the stay; (2) if the stay is lifted, whether
 13 Trader Joe's intends to re-file its motion to dismiss the Third Amended Complaint and, if so, by
 14 which date the Parties anticipate the motion will be resolved; and (3) if the stay is lifted and
 15 Trader Joe's refiles its motion to dismiss the Third Amended Complaint, the date by which the
 16 Parties propose to jointly contact Judge Spero's chambers to select a settlement conference date.

17
 18 Dated: July 6, 2015

O'MELVENY & MYERS LLP

19 By: /s/ Kate Ides

20 Kate Ides
 21 Attorneys for Defendant
 22 Trader Joe's Company

23 Dated: July 6, 2015

CLIFFORD LAW OFFICES, P.C.

24 By: /s/ Colin H. Dunn

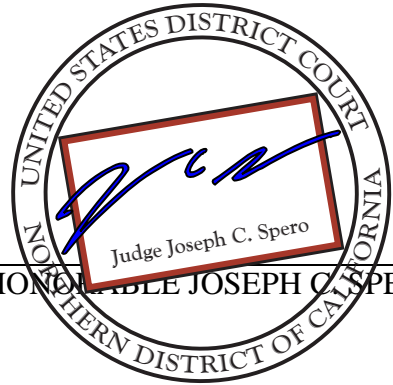
25 Colin H. Dunn
 26 Attorneys for Plaintiffs
 27 Amy Gitson and Deborah Ross
 28

[PROPOSED] ORDER

Having reviewed the Parties' joint status update regarding the scheduling of the mandatory settlement conference in this matter, it is hereby ordered that within 10 days of the next case management conference, which is currently scheduled for September 29, 2015, the Parties will jointly submit a status update to this Court wherein they will report on (1) the status of the stay; (2) if the stay is lifted, whether Trader Joe's intends to re-file its motion to dismiss the Third Amended Complaint and, if so, by which date the Parties anticipate the motion will be resolved; and (3) if the stay is lifted and Trader Joe's refiles its motion to dismiss the Third Amended Complaint, the date by which the Parties propose to jointly contact Judge Spero's chambers to select a settlement conference date.

IT IS SO ORDERED.

Dated: 7/7/15



THE HONORABLE JOSEPH C. SPERO

SIGNATURE ATTESTATION

The filing attorney attests that he has obtained concurrence regarding the filing of this document from each of the other signatories to this document.

Dated: July 6, 2015

O'MELVENY & MYERS LLP

By: /s/ Kate Ides

Kate Ides
Attorneys for Defendant
Trader Joe's Company